SPEECH

OF THE

HON. WILLIAM C. RIVES, OF VIRGINIA,

ON THE

RESOLUTION FOR THE ANNEXATION OF TEXAS.

IN SENATE UNITED STATES—FEBRUARY 15, 1845.

The Senate having resumed the consideration of the joint resolution from the House for the annexation of Texas—

Mr. RIVES rose and addressed the Senate in opposition to the joint resolution for the admission of Texas to the Union. He commenced by observing that it was very well known to the Senate, and not unknown to the country, (so far as any humble opinion of his could be deemed of any importance,) that he was not opposed to the acquisition of Texas whenever it could be fairly and honorably accomplished, in accordance with the provisions of the Constitution, and without gravely disturbing the harmony of existing relations between one section of this country and another, and between this Government and other Governments. So far from it, that he regarded that measure as combining many important *national* advantages, commending it to the consideration of the whole country—of the North and the West more than the South.

In much of what had been said by the honorable Senator from Pennsylvania (Mr. BUCHANAN) yesterday, in regard to the expediency of the annexation, he concurred. But a far higher question than that is now before us. Every thing that might be deemed by us expedient is not, therefore, lawful and justifiable. What would it profit us should we gain Texas, if in doing so we lost the security and protection of that sacred instrument which was the bond of our national union, the pledge and palladium of our liberty and happiness? The mode in which Texas was to be acquired, in its aspect upon the principles of our political compact, was, with him, a vital and paramount consideration. We had heretofore made important acquisitions of foreign territory, more than doubling the area of our original limits; but we had made the acquisition by means of the treaty-making power; and in this case of Texas, too, the treaty power had been called into action to achieve the measure of annexation; but the treaty not having received the constitutional sanction of two-thirds of this body, it was now at last discovered that all this reference to the treaty-making power was a mere useless ceremony; a work of supererogation; an idle, unmeaning formality; and that the object could be better accomplished by a joint resolution, to be passed by a mere majority of the two Houses of Congress. Under these circumstances, the question now put to the judgment and conscience of every Senator was, whether this summary mode of proceeding was warranted by the Constitution, and in conformity with that good faith which the people of the several States had pledged to each other when they adopted the Constitution and promised to abide by it.

It was the proud distinction and the peculiar happiness of this country to possess a *written* Constitution—an instrument which not only limited the general mass of power delegated to the Government, but which defined the particular powers to be exercised by each branch of that Government. According to its provisions, each department had its own appropriate sphere of action; each of them checked and was in turn checked by the others; and thus the whole together preserved the safeguard of the public liberty. The legislative department in other Governments arrogated to itself supreme power, the *jura summi imperii*; but, thank God! such legislative supremacy was unknown in ours. The legislative as well as the other departments of Government in our system, were, in the impressive language of Mr. Jefferson, "chained down" by the limitations of delegated authority. "An *elective* despotism," as he had so well said, "was not the Government we fought for." In our system the powers were so divided and balanced between the several bodies of magistracy that neither could transcend its own limits without being immediately checked by the others. This was the fundamental conception of American constitutional liberty, as understood by the enlightened founders of this Republic, and it had been faithfully carried out in the Constitution of the United States. In that instrument all the legislative powers of the Government were specifically enumerated and vested in the two Houses of Congress; the Executive power was defined and entrusted to the hands of the President; while the Judicial authority was confided to the Supreme Court, and to such other subordinate courts as should be established from time to time by Congress. This organization embraced all the great internal interests of the country.

But there remained other interests to be provided for, which had respect to the relations of this country with foreign Powers. So important was the power which controlled these, that Locke, in his celebrated Treatise on Government, had ranked it along with the Legislative and Execu-

tive, as a co-ordinate independent power, under the name of the *Federative* power. All these interests, whether of peace or war, of alliances, of succors, of commerce, of *territory*, of *boundaries*, were regulated by treaty. It became, therefore, in laying the foundations of the Government, a matter of primary importance to determine where this great power should be lodged. In all the modern Governments of Europe it was an appendage to the Executive; but in ours it was different. Under the articles of the Confederation this power was reposed in Congress; but the consent of nine States was requisite to give effect to any treaty or alliance. When the Convention met to frame the new Constitution, it was an embarrassing, as well as an important inquiry, where this power should be deposited. The first idea suggested was to place it in the Senate exclusively; then it was suggested that the President should be associated with the Senate; and when this was resolved on, then arose the question whether the President and a mere majority of the Senate should exercise the power, or whether more than a majority should be required. In this question great interests were involved. The Northern States entertained great jealousy in regard to the interests of the fisheries, and feared lest, in the future exigencies of the Republic, these might come to be ceded by treaty; while the Southern States were equally jealous respecting the navigation of the Mississippi and the question of their Western boundaries, both which points were then in controversy with Spain. Both the North and South, therefore, united in demanding that more than a simple majority of the Senate should be requisite for the ratification of a treaty, and the proportion of two-thirds was finally agreed on.

The new Constitution having been adopted by the Convention which framed it, it was presented to the people assembled in Conventions in their several States for acceptance or rejection. When the draught of the new instrument came before the Convention of Virginia, no feature in it attracted so earnest and so jealous a degree of attention as this power to form treaties. The thunder of Patrick Henry's eloquence was immediately launched against it; because he thought its arrangement of the treaty-making power did not sufficiently secure to the South and the West their rights in reference to the navigation of the Mississippi and to their western boundaries. He compared the new Constitution with the old articles of Confederation in this respect, and endeavored to show that the States had enjoyed greater security under the latter than they would by the new arrangement. So great was the anxiety in the Virginia Convention respecting the safety of Western interests, that a most searching inquiry was instituted into the acts of the Continental Congress respecting a negotiation for the temporary surrender of our right of navigating the Mississippi; and members of the Convention who had been delegates to Congress were called to the stand as witnesses, and required to testify what had been done in that matter. Nor was it until after days of deliberation that Virginia finally consented to ratify the new Constitution; but she accompanied her ratification with a proposition for its amendment, demanding higher security respecting the exercise of the treaty-making power. Her demand was, that in commercial treaties the assent of two-thirds of *all* the members of the Senate should be requisite, and that in treaties respecting territorial rights and boundaries the assent of three-fourths of both Houses should be requisite. The noble and patriotic State of North Carolina concurred with Virginia in this amendment, but it was not acceded to by the other States, the requisite number of them having ratified it with the treaty clause as it now stood.

Soon after the new Government went into operation, an important discussion arose in Congress as to the extent of this very power. He referred to the unfortunate difference of opinion between the House of Representatives and President Washington respecting the British treaty negotiated by Mr. Jay. The House called on the President for the instructions under which the treaty had been made, and General Washington sent them an answer in which, with the highest authority which had ever accompanied any merely human words, he gave his testimony as to the true intent and meaning of this part of the Constitution. His words were these:

"Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and, from the first establishment of the Government to this moment, my conduct has exemplified that opinion, that the power of *making treaties* is *exclusively* vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty, so made and promulgated, thenceforward became the law of the land."

"It is a fact declared by the General Convention, and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the *smaller States* were admitted *to equal representation* in the Senate with the larger States; and this branch of the Government was invested with *great powers*, for, on the *equal participation* of those powers, the sovereignty and political safety of the smaller States were deemed essentially to depend."

Mr. R. was happy to say that that patriotic and enlightened House of Representatives, including, as it did, such men as Madison, Nicholas, Livingston, and Gallatin, and going, as it did, to an extent hardly now justified in regard to their constitutional right freely to pass or not to pass acts to redeem the public faith, when plighted by treaties, yet did disclaim, in the most positive manner, any agency in the making of treaties.

Mr. R. said he had brought forward these facts in order to show that no question had entered more deeply into the framework and vital compromises of the Constitution than the arrangement of the treaty-making power—a power now sought to be exercised, in open defiance of the Constitution, by the two Houses of Congress. There were occasions when the sudden irruption of new

and dangerous innovations drove us all to an examination of the fundamental doctrines of our system. Virginia had a maxim in her bill of rights which could never be too often repeated, that "no free government or the blessing of liberty can be preserved to any people but by a firm adherence to justice, temperance, moderation, and virtue, and by a frequent recurrence to fundamental principles." If ever there had been an occasion which called for such a recurrence, and the exercise of these saving virtues, this was one.

Having seen where the Constitution has deposited the power of making treaties, the next question which presented itself was this · What is a treaty '—for on that question depended a rightful decision on the measure now proposed.

An attempt had been made to attach a technical and cabalistic meaning to the word, which, if adopted, went to exclude many international contracts. But was this so ' We were in possession of what was justly deemed the highest authority on such questions. Vattel told us what was the naked fundamental conception of a treaty, defining it to be "a public compact between independent sovereign powers." That was the whole matter ; there was no mystery about it. He knew indeed that, in the language of diplomacy, we had both treaties and conventions, but conventions were all treaties ; if not, whence did the Senate derive its power to ratify conventions, so called ' An agreement between two nations in reference to a specific object or to a single act to be performed, such as the payment of indemnities or the fixing of some unimportant boundary, was usually denominated a convention ; still it was in substance a treaty, for the term treaty was generic and comprehended the whole. A treaty, according to the highest authority, was simply an international compact.

It was important to know in what sense this term treaty was understood by the people when they were called on to ratify the treaty-making power, as laid down in the new Constitution. And on this point it gave him great pleasure to turn the attention of the Senate to a brief passage of the Federalist, which not only furnished a definition of a treaty, but went to explain the whole nature, philosophy, and true conception of the treaty-making power. Gentlemen would find the passage in No. 75 of the Federalist, page 322 :

"The essence of the Legislative is to enact laws ; or, in other words, to prescribe rules for the regulation of the society ; while the execution of the laws and the employment of the common strength, either for this purpose or for the common defence, seem to comprise all the functions of the Executive magistrate. The power of making treaties is plainly neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones, and still less to an exertion of the common strength. Its objects are *contracts with foreign Powers*, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but *agreements between sovereign and sovereign*. The power in question, therefore, seems to form a distinct department, and to belong properly neither to the Legislative nor to the Executive."

Now, with the lights derived from this authoritative definition of treaties and the treaty-making power, Mr. R. turned to the joint resolution which had been received from the House of Representatives, and he would inquire whether it was not, to all intents and purposes, in every practical sense, a treaty, and nothing but a treaty ' It was not a change of name or a variation in form which affected the substance of things. He put it to gentlemen to say whether this joint resolution was not in substance a "*contract with a foreign Power?*" Was it not a treaty, in the language of the Federalist, just as much as Mr. Tyler's treaty, which had been submitted at the last session ' What was a *contract ?* His learned friend from Pennsylvania (Mr. Bechanan) needed not to be reminded that a contract was an "agreement to do or not to do a particular thing on a sufficient consideration." Was not this an *agreement*, on certain terms and conditions, to admit a foreign nation into this associated Federal Republic ' The question answered itself. What had the honorable Senator done yesterday ' Had he not gone over the terms of this agreement, declaring that some of them he liked and others he did not like ' In this resolution Congress was asked to say to Texas, "If you will unhorse your President ; dissolve your Government ; go back to a state of nature ; cede all your public establishments, mines, minerals, and every thing but your public lands ; retain your public domain ; continue responsible for your debts ; agree to the understanding that new States may be carved out of your territory, on the condition that in all of them north of a certain line slavery shall be prohibited forever, and in those south of it it shall or shall not be prohibited, as the people may choose—if you will do all these things, then it is a bargain, and we will admit you into our Confederacy on equal terms with ourselves." Now, if this was not an agreement—if it was not a contract, and that with an extraordinary display of terms too, then Mr. R. did not know what an agreement or a contract was. That it was an agreement all the world must see. No man could wink so hard as not to see it. The only question, then, which remained was, whether it was not an agreement with *a foreign independent Power?*

What, then, was Texas ' Need Mr. R., at this time of day, prove the title of Texas to national independence ' Should he be told that she was not a foreign, sovereign, independent Power ' He presumed not. Then, whether we looked at the terms or at the parties, this was an *agreement between sovereign and sovereign.*

Now, then, where was such an agreement to be consummated according to the Constitution ' He asked the honorable Senator from Pennsylvania where ' The joint resolution announces its true character on its face. *Res ipsa loquitur.* It is styled a joint resolution "declaring the terms

on which Congress will admit Texas into the Union as a State." When we looked at the body of the resolution did it bear the ordinary badge of legislation—"be it enacted?" No: its language was "be it consented." [A laugh.] It was the language of the marriage ceremony—"whereas A. and B. have *consented together* in holy wedlock." [Increased laughter.] (He was sorry to be obliged to make such an allusion when addressing the honorable gentleman, who was not *yet* initiated in these mysteries.) [More laughter.] Yes, its terms were "be it consented;" "it is hereby *agreed*," not "hereby *enacted*." It was the very language of treaties. Gentlemen could not wink so hard as not to see it was in substance a treaty, begun and ended by legislation.

And, further: when we looked at the subject-matter of the agreement, Mr. R. averred not only that it was a treaty, but that the object could be consummated in no other way than by treaty.

Mr. R. laid down this proposition, and he invited the honorable Senator (who, though not a "Philadelphia lawyer," was at all events a Pennsylvania lawyer) to find a flaw in it if he could: he asserted that foreign territory could not peaceably be acquired (upon terms and conditions, as in this case) in any other mode than by treaty; because such territory, being under an independent sovereign Power, could not be peaceably acquired without the consent of that sovereign; and, when that consent was given, in whatever form, it constituted a treaty, and nothing else.

He had heard, by way of embarrassing and mystifying the subject, a great deal said as to the various modes in which territory could be acquired. They were told that it might be acquired by conquest and by discovery. So it could; but neither of these modes affected Mr. R.'s proposition in the least. He said it could not be *peaceably* acquired; this, in terms, excluded acquisition by conquest; and by implication it excluded discovery, because it referred to a case of a peopled and settled country, under the jurisdiction of a sovereign organized Power. He again invited his honorable and learned friend to answer it if he could. Let him point out a mode by which *foreign* territory could be peaceably acquired, in the proper political sense of the rights of jurisdiction attaching to it, otherwise than by treaty.

Hence it was that, after the discussions of a quarter of a century, it had come to be the settled law of the land that the treaty power could acquire foreign territory, and that it exclusively was competent to that function.

Mr. R. went on to say that this question had come up for decision before the highest judicial tribunal of the country in the case of the American Insurance company vs. Canter, referred to by the honorable Senator from Kentucky, (Mr. MOREHEAD,) when that august court had pronounced the opinion that the Constitution, having established the treaty-making power without qualification or restriction, it had the same extent in our Government which it had in other Governments, and legitimately extended to the acquisition of foreign territory. He was no lawyer, and felt as if he was going out of his sphere in quoting cases to his learned friend. He understood, however, that the honorable Senator recognised the correctness of that decision in its fullest extent. He did not pretend to question that the treaty power might acquire foreign territory; but he made a distinction—that when a foreign Power alienated only a portion of its territory, and thereby dismembered itself, a treaty was necessary; but the case was different when such a Government alienated the whole of its territory. Such was the distinction of the gentleman. But if there was any thing in it, the gentleman was estopped from using such an argument, because the treaty submitted at the last session did propose to alienate the whole Texan territory, and the gentleman voted for it. By his own act, therefore, he had recognised the doctrine that the treaty power was the proper instrument of acquisition, even when the whole territory of a foreign Government was by its own act to be alienated. Doubtless the gentleman had the cases of Louisiana and Florida in his mind. But even admitting the distinction taken, that did not affect the domestic question with us; it affected only the other party. The question it raised was not whether this Government could acquire the territory of another Government by treaty, but whether or not it was competent for a foreign Government to alienate the whole of its territory without the express consent of the people. But there was a most obvious way to avoid that difficulty. This joint resolution provided for taking the sense of the people of Texas on the question in their own primary assemblies. And could not a treaty provide the same thing?

And here he would remind the honorable Senator that Mr. Madison, in the instructions given by him at the time of the acquisition of Louisiana, suggested that very thing—that some mode should be provided of obtaining the consent of the inhabitants to the act of cession. This was according to the general principles of the law of nations. Vattel himself declared that in such cases the people were to be consulted. Now, what Mr. R. said was this: that, as the alienation of the whole was more important than the alienation of a part, so there was a greater necessity for observing all the constitutional guaranties furnished by the treaty-making power in one case than in the other. The admission of Texas being the former case, it required the interposition of all the guaranties in the Constitution respecting transactions with foreign nations, and must have the assent of two-thirds of the sovereign members of the Confederacy.

Perhaps the honorable Senator had the idea that, in a transaction like this, where a foreign Government transferred its entire territory, with all its inhabitants, to the Government of a new sovereign, where it transferred human allegiance as well as mere acres of the soil, it was not a treaty, and he feared an honorable friend in his eye (Mr. FOSTER) was a good deal taken by this doctrine. But was there any ground for it? A treaty was an agreement with a foreign sovereign; and where

was the sovereignty in Texas? Certainly, according to the American doctrine, in the mass of the people. Now, if the agreement was made ultimately with the people, instead of being less, it was more emphatically a treaty with a sovereign Power than if made with the Government only. If the honorable Senator from Pennsylvania really intended to intimate that a transaction by which an entire territory and people are transferred to a foreign sovereignty is not properly a treaty, (though he at least would seem to be estopped from such an argument by his vote for the treaty of the last session,) he would give the "law and the prophets." It was an authority from the weight of which that gentleman would not detract, and it went directly to show that precisely such a transaction as is now in view with the people of Texas is a treaty. Vattel (book 1, chap. 16) speaks of two forms of treaty, in which one of the parties assume a subordinate relation to the other; the one a treaty of *protection* merely, and the other a treaty by which one Power, on account of weakness, an intimate community of interest, or other cause, submits itself entirely to another. His language was this—first as to a treaty of protection:

"When a nation is not capable of preserving itself from insult and oppression, she may procure the protection of a more powerful State. If she obtains this by only engaging to perform certain articles, as, to pay a tribute in return for the safety obtained, to furnish her protector with troops, and to embark in all his wars as a joint concern, but still reserving to herself the right of administering her own Government at pleasure, it is a simple *treaty of protection*, that does not at all derogate from her sovereignty, and differs not from the ordinary treaties of alliance, otherwise than as it creates a difference in the dignity of the contracting parties."

Then follows a paragraph describing precisely the nature of the transaction now before us, by which one foreign State is proposed to be completely subjected to and incorporated into another, and denominating it expressly a treaty. He begged leave to read it to the Senate:

"But this matter is sometimes carried still further; and, although a nation is under an obligation to preserve with the utmost care the liberty and independence it inherits from Nature, yet, when it has not sufficient strength of itself, and feels itself unable to resist its enemies, it may lawfully subject itself to a more powerful nation, on certain conditions agreed to by both parties; and the compact or *treaty* of submission will thenceforward be the measure and the rule of the rights of each. For, since the people who enter into subjection resign a right which naturally belongs to them, and transfer it to another nation, they are perfectly at liberty to annex what conditions they please to this transfer; and the other party, by accepting their subjection on this footing, engages to observe religiously all the clauses of the *treaty*."

He knew that his honorable and learned friend from Massachusetts (Mr. Choate) had, during the last session, thrown out the idea that this was not properly the subject of treaty, and had asserted that the records of history could not show an example of such a treaty. With all respect for the learning and sagacity of his honorable friend, he must nevertheless be permitted to say that on this point he thought him mistaken. Such instances must naturally have occurred in the mutations of empire. His friend well knew the frequency with which the absorption of lesser States had occurred in the progress of the Roman empire to universal dominion. He had not made this point a subject of recent inquiry: but he thought he could not, in saying that there had been many instances of such absorption and incorporation by treaty, be mistaken. It had also taken place in modern times. How had the vast monarchies of Europe grown up and extended themselves but by the annexation (in some cases undoubtedly by convention) of weaker territories around them? Let the honorable Senator consult the classic pages of his own admirable Prescott, and I doubt not he will find there that the Spanish monarchy had been built up and established by the successive incorporations with Arragon and Castile of the kingdoms of Granada and Navarre. The case of Granada was directly in point, and was so striking and picturesque in its character as to be fresh in the recollection of all. The Moorish sovereign, in the menaced wreck of his affairs, made a *treaty*, by which he surrendered his whole kingdom to Ferdinand and Isabella for a smaller province, which also he afterwards surrendered, and finally retired into Africa. Let the gentleman look at the history of the Low Countries—the great battle-field of Europe—and see how, with occasional periods of national independence, they had been transferred from one sovereign to another. Was all this done without treaty? Or let him turn to a still more modern instance—the connexion between Norway and Sweden. Norway had been a dependency of Denmark: Denmark, by treaty, ceded her to Sweden, but Norway refused to be ceded: she set up her own banner, like Texas; adopted a new Constitution, and asserted her independence: but at length, being closely pressed by Sweden, she entered into negotiation, and concluded a *convention*, by which she surrendered her sovereignty, both territory and people, to the Swedish crown. These certainly were cases in point. But Mr. R. did not rest on them: he rested on the impregnable authority of the well-known exposition of the law of nations which he had quoted: an authority which was in the hands of every member of the Convention which framed the Constitution. While, on the part of Texas, therefore, an appeal to the people might be necessary to sanction the transfer of their entire territory and national independence, with us the Constitution had provided a competent power to treat with them in the regular treaty-making branch of the Government, and that power we were bound to pursue according to the imperative forms of the Constitution.

Mr. R. had said thus much in relation to the treaty-making power, because he considered it an indispensable preliminary to another question. If the general power of making conventional arrangements with foreign nations was delegated by the Constitution to the President and two-thirds of

the Senate, and, in the words of General Washington, *exclusively* vested in them, then he held that no other clause in the same instrument could be so interpreted as to nullify that grant. Would the Senator from Pennsylvania tell him that after this investiture of the treaty power in the Executive and two-thirds of the States, as represented in this body, it was admissible to give such a construction to another clause of the Constitution as wholly to overrule and subvert that power? Yet that was the scope and necessary effect of the argument. Under the power of Congress to admit *new* States into the Union, it was contended that a mere majority of the two Houses of Congress could enter into stipulations and agreements with *foreign* States for their incorporation into our political system, although the power of treating with *foreign* States had been expressly restricted to the President and *two-thirds* of the States, as represented in this body. Would it not be most extraordinary, indeed, that the wise and sagacious men who framed the Constitution should have placed so strong a check on the most unimportant transactions of this Government with foreign Powers, such as the payment of a sum of money, the surrender of criminals, the fixing of some small and unimportant boundary line, by requiring the assent of two-thirds of the States, and yet should have abandoned to a simple majority of the two Houses the vast, formidable, transcendant power of treating with a *foreign nation* for its incorporation into our Union? The mere statement of the proposition was sufficient. It could not bear a moment's consideration. Was not such a power as capable of deranging the original adjustment of their relative interests among the States as an amendment of the Constitution itself? And yet for the amendment of the Constitution the assent of *three-fourths* of the States was indispensably required. Was it to be presumed, in the face of this manifest intention of the framers of the Constitution to reserve a veto on all transactions and agreements with foreign States in the hands of one-third of the sovereign members of the Confederacy, that the vast power of admitting a *foreign* Government and people into the Union would be entrusted to the vote of a mere transient party majority of the two Houses of Congress? It cannot be supposed for a moment.

And in what part of the Constitution was this vast, imperial power, capable of subverting all its well-adjusted balances, to be found?—this lever of Archimedes, with which to prize up from its stable foundations the whole system of our constitutional Government? Where, he asked, was it to be found? In the forefront of the Constitution? In the same phalanx of enumerated powers, with the power to make war, the power to coin money, the power to raise armies, to build navies, to levy taxes? No, sir. At the very foot of the instrument, amid the odds and ends of miscellaneous provisions. It was relegated to an obscure corner; it was pushed off into a dark hiding-place, where it lay concealed, like some Guy Fawkes, beneath the Senate House, prepared to blow up and involve in one common ruin the Constitution and the Union of the country. Surely, if this provision had the colossal magnitude which the honorable Senator supposed, it would not have been thus *sneaked* off (to use the memorable expression of a former distinguished member of this body, now no more) into a corner.

The honorable Senator had instructed us by reading certain general rules of interpretation laid down by Vattel; but Mr. R. should leave all that, and come a little nearer home. He would ask the gentleman's attention and that of the Senate to a very pertinent and practical rule of construction, applying to the Constitution of the United States, laid down by one who had a deeper interest in our system. Not that Mr. R. objected to the passage which the Senator from Pennsylvania had read. The rules were good in themselves, but they were inapplicable to the question. He would show that the language of the Constitution, in the clause now under discussion, admitted of but one rational interpretation, and that in precise coincidence with the literal import of the words, as they were universally understood and received at the time of the establishment of the Constitution. He had before him a canon of constitutional interpretation which he well knew the Senator from Pennsylvania must respect, for it came from an authority before which all true Democrats would reverentially bow. It was to be found in a letter from Mr. Jefferson to Judge Johnson, in which that distinguished founder of the Democratic school recapitulated the fundamental principles of his creed. "On 'every question of construction," he says, "we should *carry ourselves back to the time when the* 'Constitution was adopted, recollect the spirit manifested in the debates, and, instead of trying 'what meaning may *be squeezed* out of the text, or invented against it, conform to the probable 'one in which it was passed."

Here was a good republican rule of construction; and it was a rule which had been sanctioned by the highest judicial tribunal of the country, in one of the greatest causes ever brought up for the decision of any court on earth. It was the case of a citizen of Maryland against the Commonwealth of Pennsylvania, in reference to the recovery of fugitive slaves. In that case the most delicate and critical relations of the States of this Union were involved; and, in delivering the opinion of the Court, recognising and affirming one of the fundamental compromises of the Constitution, Judge Story says:

"The safest rule of interpretation, after all, will be found to be to look to the nature and *objects* of the particular powers, duties, and rights, *with all the lights and aids of contemporary history:* and to give to the words of each just such operation and force, consistent with their legitimate meaning, as *may fairly secure and attain the ends proposed.*"

And now, with the aids and lights of contemporaneous history, Mr. R. invited the Senate to do what Mr. Jefferson had said ought to be done in every question of constitutional construction—"to

go back to the time when the Constitution was adopted," and see what was the sense in which its provisions were then practically intended and understood.

At the time when the Constitution was adopted there were two descriptions of political communities or existences embraced within the limits of the United States; one consisted of organized *States*, with all the powers, faculties, and instruments of independent self-government in regard to their municipal and domestic concerns, and at the same time participating in the administration of the General Government over the Union by their Representatives in Congress. Side by side with these was another class, consisting of dependant communities, with imperfect and subordinate powers, and denominated *Territories*. These Territories were governed, mediately or immediately, by Congress, and were without any voice of their own in the national councils. These latter communities were doubtless prominently in the view of the Constitution when it spoke of new States being admitted. He did not mean to say that the clause referred only to such Territories as were within the limits of the United States *at the time of the adoption of the Constitution*. It applied to all Territories which should be included within the national limits at the time when new States were to be formed out of them. Virginia had ceded to the United States in 1784 the vast body of the lands northwest of the Ohio, and in the act of cession had expressly stipulated that the territory so ceded should be divided into not less than three nor more than five republican States, which should come into the Union on an equal footing with the original States. These embryo States formed one class of candidates for admission into the Union, and were, of course, within the view of the constiutional provision.

But this was not all. There were several States, of large and disproportionate dimensions, within which it was foreseen new States must arise. Virginia at that time included within her limits what was then called the *district* of Kentucky. This territory was, even then, aspiring to rise into the dignity of a State, and had entered into an arrangement with the Legislature of Virginia for that purpose. Then there was the patriotic and high-spirited community of *Frankland*—the germ of the future State of Tennessee—embraced within the limits of North Carolina. She was then in substance a separate community, exercising *de facto*, though in a style of almost Arcadian simplicity, many of the attributes of independent sovereignty. Besides these there was the Territory of Maine (within the limits of Massachusetts) also aspiring after State dignity. There was, moreover, Vermont, lying within territory claimed by the State of New York, but having long since set up a separate Government, and earnestly demanded admission into the Confederacy. The Senator's own State, too, was at that time agitated by schemes of division, which, if they had been unfortunately carried into execution, would have deprived her of the proud honor she now wears of being the keystone of the Federal arch. Within the broad limits of Georgia—then stretching over what are now the States of Mississippi and Alabama—it was impossible not to foresee that new States would also arise. Thus the country stood when the Constitution was adopted; and it was in view of this state of things, and of the fact that there was no power in the old Confederation to admit new States, that this much perverted clause was inserted.

Here, then, were five new States to come in out of the Northwest Territory, besides all those other aspiring scions from the larger States, which were springing up on all sides. The old Confederation, strange as it may appear, possessed no power to admit *new States* out of *domestic territory*. On this point Mr. R. would call the attention of the Senate to a number of the Federalist, in which Mr. Madison distinctly stated this defect of power in the old Confederation, and traced to that defect the origin of the clause in the present Constitution which gives to Congress the power to admit new States into the Union. Nobody knows better than the Senator from Pennsylvania that it is a fundamental rule, in the construction of all remedial acts, to consider the state of the old law, the defect or mischief existing under it, and then the remedy furnished by the new law, which must be so construed as to correct the particular defect or mischief which existed under the old law. Now, Mr. President, let us see what Mr. Madison says of the want of power under the articles of Confederation. In the 38th number of the Federalist, speaking of the Northwest Territory, which had been ceded to the United States by Virginia, and which Virginia had obtained a positive stipulation from the old Congress should be divided into not less than three nor more than five Republican States, he says:

"Congress have assumed the administration of this stock. They have begun to render it productive. Congress have undertaken to do more: they have proceeded to form *new States;* [that is, prospectively;] to erect temporary Governments, to appoint officers for them, and to prescribe the conditions on which such States *shall be admitted into the Confederacy*. All this has been done, and done *without the least color of constitutional authority*."

We have only to connect with this passage what the honorable Senator read to us from the 43d number of the Federalist, written also by Mr. Madison, and we have a complete clue to the true and incontestable meaning of the clause of the new Constitution giving to Congress the power to admit new States into the Union. After quoting the whole clause providing for the admission of new States into the Union, Mr. Madison, in the number of the Federalist now referred to, proceeds as follows:

"In the articles of Confederation no provision is found on this important subject. Canada was to be admitted of right, on her joining in the measures of the United States; and the other *colonies*, by

which were evidently meant the other British colonies, at the discretion of nine States. The eventual establishment of *new States* seems to have been overlooked by the compilers of that instrument. We have seen the inconvenience of this omission, and the assumption of power into which Congress have been led by it. With great propriety, therefore, has the new system supplied the defect."

The new Constitution was our great national *remedial* act. It was intended to correct the evils and defects of the Confederation. Under the old system, there had existed, as we have seen, no authority to admit new States arising within the limits of the United States—that was the defect to be corrected, and this shed irresistible light on the true meaning of the new clause. Admission into the Confederacy had been clamorously demanded for years by Vermont, and the other rising communities to which I have referred were showing also an impatient desire to be admitted into the Union as States. These young giants were uneasy and restless under the restraints of their condition of pupilage; they panted to cast aside their tutors and governors, and to assume the *toga virilis* of State sovereignty. The passage in the 43d number of the Federalist, quoted above, which was rather unwittingly, as it seemed to me, for *his* purpose, read by the honorable Senator from Pennsylvania, completed the evidence (even to the proof of a *negative*) of the true meaning of the clause, and went conclusively to show that the power to admit new States did *not* mean a power to admit *foreign* but American States. What does Mr. Madison say in that number of the Federalist? The articles of Confederation, he says, provided for the admission of Canada, whose aid in the war of the Revolution we were desirous to obtain. They allowed her to come in by her simply "joining in the measures of the United States," and this assent was given unanimously by all the States; for it was inserted in the articles of Confederation themselves, which were the unanimous act of the old thirteen States. The articles of Confederation also provided that the other "*colonies*" (meaning, as Mr. Madison says, British colonies) might likewise be admitted, but not without the assent of *nine States*, forming *two-thirds* of the States then in the Confederacy. But, at the same time, says Mr. Madison, no provision was made by the articles of Confederation for the admission of *new States*. "The eventual establishment of *new States*," he says, "seems to have been overlooked by the compilers of that instrument." The words *new States* are italicised by him, and doubtless with the design of contradistinguishing them from *foreign* colonies. By the former, therefore, as used in the new Constitution, was clearly meant American States, to be formed *within our own territory*. The provision to admit Canada and *foreign* British colonies was introduced in the articles of Confederation when we were in the midst of the Revolutionary war, in the hope that some of them would join us in the struggle; but, after the close of the war, when the vital struggle was over, and we no longer needed their aid, the clause about *new States* was introduced into the Constitution with exclusive reference to the state of things in our own country, and to provide for the admission of States to be "established" or "formed," using the words of Mr. Madison, within our own territorial and political system. So far as the future acquisition of *foreign* territory was in the view of the framers of the Constitution, it was provided for in another part of the instrument entirely different from this. If the honorable Senator would look at the discussions in the Convention respecting the treaty-making power, he would there see reference made to the acquisition or cession of *territory*, the adjustment of boundaries, &c. as embraced within the scope of the *treaty power*; but nowhere, I fearlessly assert, will he see the slightest reference to *foreign* territory or *foreign* States in connexion with the clause providing for the admission of new States into the Union.

This, as Mr. R. believed, was the true and undoubted theory of the Constitution. He was not inclined to adopt the view which had been put forth by some gentlemen, that the Constitution contained no reference at all to any future extension of territory. What he said was, that the *mode* of effecting such extension was not in view in this clause respecting new States, but that it belonged to the treaty power. And this was in analogy to the *principle*, though not the form, of the old articles of confederation. We have seen that while the Confederation made provision for the admission of *foreign* colonies into the confederacy, it was to be done only by the assent of *nine States*, being *two-thirds* of the whole number of States, which is precisely the proportion now required by the existing Constitution to effect the acquisition of foreign territory by treaty. It must be borne in mind, too, that under the articles of confederation the Continental Congress was the treaty-making as well as legislative branch of the Government, and that the same vote of *nine States*, or two-thirds, was required to enter into treaties or to admit Canada and the other British colonies into the confederacy. The present extraordinary claim, therefore, to admit *foreign* States into the Union by a mere legislative majority of the two Houses of Congress, does not receive any, the slightest countenance, even from the old articles of confederation.

But the Senator from Pennsylvania insists "it is nominated in the bond." His argument was short and simple, at least. It ran thus: "New States may be admitted by Congress." Texas is a new State; therefore, Texas may be admitted by Congress. And the gentleman read Crabbe's Synonymes and Vattel's law of nations to show us what this clause of the Constitution means by the word *State*. Now, with all respect, Mr. R. must say, that neither Crabbe's Synonymes, nor Vattel, no, nor (he hoped his honorable friend from Mississippi would not suppose he meant a pun) *Walker's* dictionary, was the authority by which this question was to be decided. The Constitution decides it for itself.

It surely is not for me (said Mr. R.) to assume to tell the learned legal Senator from Pennsylvania

what had been the repeated decisions of the Supreme Court respecting the meaning of the word "State," as used in the Constitution. The interpretation put upon it by that gentleman and his friends, and the very definition of Vattel, now quoted by him, had been over and over again brought before that Court, and rejected as wholly inapplicable to the Constitution of the United States. In regard to the meaning of the phrase, as used in the Constitution, that august tribunal had said, through its wisest luminaries, the Constitution must speak for itself. He might refer the gentleman to the early and leading case of Hepburn vs. Elzey, where Chief Justice Marshall had overruled and rejected Vattel's definition, under the general law of nations, as wholly inapplicable to the Constitution of the United States.

Mr. R. was no lawyer, yet he had tried, by close and long study, to understand the Constitution of his country by all the lights accessible to him. There had been a more recent and very important case, sometimes called the Cherokee case, and sometimes the Georgia case, (Worcester vs. the State of Georgia, I think,) in which this definition, quoted by the gentleman from Vattel, had been again rejected as having nothing to do with the Constitution of the United States. A *State* of the American Union, as the word was found in the Constitution of the United States, meant a very different thing from a State or Nation in the general unqualified sense of the law of nations. Under the law of nations a State was a wholly sovereign, separate, and independent community. But this certainly was not the condition of the States of the American Union, in the sense of the Constitution, for they were expressly disabled by the Constitution itself from the exercise of many of the attributes of national sovereignty—making war, treaties, &c. No term had a greater variety of significations than this of State. In the celebrated Virginia report and resolutions of 1799 Mr. Madison said there were four different significations in which it was used, and so said the Supreme Court. Sometimes it meant the territory, simply; at other times it meant the political community; in other cases, the organized Government. In all these different senses, according to the Supreme Court, it is used in different parts of the Constitution, and in each case its particular meaning must be determined by the context. If we wish, therefore, to arrive at the true sense in which this phrase "new States" is used in the clause of the Constitution now under discussion, and not to "*squeeze* out of the text," as Mr. Jefferson says, some meaning contrary to the intentions of the framers of the Constitution, and of the people who accepted it, we must, instead of referring to *Crabbe's Synonymes*, *Walker's Dictionary*, or Vattel, turn to the Constitution itself, and, in doing that, read the *whole clause* relating to the subject, and not a part, torn and isolated from the rest. Now, Mr. President, let us read the whole clause relating to the subject, as it stands in the Constitution:

"New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress."

In giving to Congress the power to admit "new States into the Union," the Constitution proceeds, "no new States shall be *formed* or *erected*," &c. The new States to be admitted, then, were States to be *formed* or *erected*. Now, sir, is it not an absurdity to suppose, would it not be the grossest solecism in language even, that the Congress of the United States was to legislate respecting the "*formation*" or "*erection*" of new States, except within the limits of the United States, under our own jurisdiction, and out of our own territory? Mark me, Mr. President, I do not mean to restrict this power to territory within the *original* limits of the United States, but territory within the limits of the United States at *the time when the new State*, asking for admission, is to be *formed* or *erected*. The *text* of the Constitution itself, then, comes most decisively in confirmation of the overwhelming evidence of contemporary history, to show what Mr. Jefferson calls the true and honest sense of the instrument—the sense in which it was framed by the Convention and adopted by the people.

But if the gentleman still insists on his *ultra-literal* meaning, Mr. R. would take the liberty of carrying him a little further back in his law learning. Though he was no lawyer, he repeated, yet in his younger days, with a desire of acquiring such a knowledge of the general principles of civil and political jurisprudence as is proper to every citizen of a free country, he had read Blackstone's Commentaries, and he had there found that of all the various sorts of interpretations, that which is most condemned was the strictly *literal* interpretation. *Qui hæret in litera, hæret in cortice.*

The gentleman said Texas was a State, was a new State, and therefore we might admit her into the Union. Did he recollect the case of the Bolognian law, which imposed the heaviest penalty on the act of "drawing blood in the streets"? Now, it happened that a surgeon, passing along the street, saw a man drop under a stroke of apoplexy, and bled him on the spot to save his life. Now, sir, according to the honorable Senator's canons of interpretation, the surgeon must have been condemned to death for his humanity, for he had "drawn blood in the streets." Such were the *words* of the law, but such was not its meaning. The true meaning was not to be obtained from the words only, but from the context, from the subject-matter, from the cause and reason of the law, and from the consequences which would attend a given construction. To illustrate this same principle, Cicero had long ago cited one of the laws of Rome, which ordained that the mariners who deserted the ship in a storm should forfeit all their interest in the vessel and cargo to the man who should *remain in the vessel*. A ship at sea being threatened with impending de-

struction by a sudden and fearful tempest, the mariners all left her to save their lives. It happened there was a helpless invalid on board, who could not stir; and, by the mercy of Providence, the ship was wafted into port, and his life was saved. He knew the provision of the law, and claimed the ownership of the vessel and cargo, as forfeited to his benefit, because he had *remained in the ship*. According to the new school of blind, inexorable interpretation, his case was a good one, for it is quite as unquestionable that he had "remained in the ship," according to the words of the law, as that Texas is a State, and perhaps a little more so.

But the Senator had quoted a name always remembered with respect by those who knew him, that of Nathaniel Macon, of North Carolina. He had conjured up the venerated spirit of that departed patriot to his aid; but what did his authority prove? Absolutely nothing but what was already admitted on all hands. The case of which Mr. Macon was speaking was the case of the admission of Louisiana as a State into the Union, not as a *foreign* State, but long after that territory had been acquired by treaty, and when it was proposed to form a new State out of it. What Mr. Macon said was, that the clause respecting the admission of new States applied to States formed out of *new territories* belonging to the United States as well as out of *old*; and who now denied this? All that is contended for is, that the new State must be formed out of territory within the limits of the United States at the time the State applies for admission. When Louisiana applied, was she not a part of the territory of the United States? The question raised in that case was, whether Congress could admit a new State formed out of territory which was not within the ORIGINAL limits of the United States. This was denied by some, who would restrict the meaning of the Constitution to such territory as was within our limits at the time of its adoption. This ultra ground had been taken in the debate by Mr. Quincy, of Massachusetts, and it was to that objection that the observations made by Mr. Macon were addressed. They have not the slightest application to *foreign* territory like Texas, being no part of the territory of the United States, as Louisiana was at the *time* (1811) when she applied for admission as a State into the Union.

But the honorable Senator had invoked the name of Mr. Jefferson also, and had brought him before the Senate upon the stool of repentance, as making a solemn palinode and recantation of his opinions on the question of admitting *foreign* nations as new States into the Union. Did Mr. Jefferson ever do this? Mr. R. admitted that Mr. Jefferson did practically abandon the opinion first expressed by him that foreign territory could not be constitutionally acquired by treaty. But the opinion, so earnestly and emphatically expressed by him in his letters to Mr. Nicholas and Mr. Breckenridge, that, under the clause giving power to *Congress* to "admit *new* States into the Union," there was no authority, or color of authority, to use his own language, to "incorporate *foreign* nations into our Union," was never in any manner or in any degree retracted, abandoned, or qualified by him, either in act or word. Louisiana was acquired by *treaty*, and laws were subsequently passed appropriating money to carry the *treaty* into effect by the payment of the purchase money. All this received the official sanction of Mr. Jefferson. But let the honorable Senator from Pennsylvania tell me when, or where, or how, by word or by deed, Mr. Jefferson ever countenanced the idea that Louisiana might have been admitted as a *foreign* State into the Union by the legislative action of a mere majority of the two Houses of Congress. Mr. R. averred that the solemn testimony of Mr. Jefferson, in his letters to both Mr. Nicholas and Mr. Breckenridge, against so monstrous a doctrine, remained unrevoked to this day, in all its pristine vigor, and would so remain "to the last syllable of recorded time." What! Mr. Jefferson hold that *Congress* could admit *foreign* nations as *new States* into the Union, whether England, Ireland, or Holland, which he had put as examples in his letter to Mr. Nicholas, or Texas, as much a *foreign* nation at this moment as either of them, by the legislative action of a mere majority of Congress! He utterly abjured such an idea. And, could the spirit of that great man now descend into this Hall, it would indignantly frown upon the doctrine. All the glorious traditions of his illustrious public life pledged him to its denial.

Mr. R. considered this the most solemn question which had arisen since the formation of the Constitution, and it became every man to look well on what ground he stood. His honorable friend had referred to the history of the proceedings of the Convention which formed the Constitution, and asserted that a question was formally taken on the restriction of the power of Congress to admit new States into the Union to the territorial limits of the United States, and that the restriction was decisively rejected by a vote of that body. Although the Senator had said that he entertained not a doubt respecting his interpretation of the Constitution, Mr. R. would take the liberty of saying for him, that, if he had done as he (Mr. R.) had done—if he had examined minutely, step by step, the proceedings of the Federal Convention on this subject, he would have found that there is not a particle of foundation for the idea he has taken up, (he could not but think at second hand,) that there ever was any vote of that body deciding that the power of Congress to admit new States should not be confined to the territory of the United States, meaning of course the actual territory of the United States at the time when the new State is to be admitted. Mr. R. averred that there never was any vote or proceeding of the Convention fairly susceptible of such an interpretation, and this he would now undertake to demonstrate.

In pursuing this investigation, it would be necessary to go back to the first resolution moved on the subject, which was a part of the Virginia propositions moved by Governor Randolph, in the first days of the Convention. It was in the following words:

"*Resolved*, That provision ought to be made for the admission of States, *lawfully arising* within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices less than the whole."

Before leaving this resolution let us comprehend its real bearing and import. As a part of the history of the times, we must bear in mind that the State of Vermont, which had violently separated herself from the State of New York, of which she had been a part, and within whose lawful jurisdiction she was still claimed to be by the authorities of New York, had for years been earnestly and importunately applying for admission into the Confederacy under the Articles of Confederation. Hardly any subject more occupied and disturbed the deliberations of the Continental Congress. It divided the States into two distinct parties, some for, others against the admission of Vermont. Mr. Madison, then a member of the old Congress, was one of those who entertained and energetically expressed the opinion that the admission of Vermont, under the circumstances of her violent separation from New York, and without the consent of New York to her admission, would be a most dangerous precedent, leading to a dismemberment of other large States, and Virginia among others, by similar unlawful means. He therefore steadily and firmly opposed the admission of Vermont into the Confederacy without the express consent of New York, as will be seen from many of his letters, contained in the first volume of the Madison Papers.

The opinions of Mr. Madison on this subject are of special importance in this connexion, because I know, (said Mr. R.) from a communication of that great and virtuous man, made with his characteristic delicacy, that he proposed and draughted, mainly, the resolutions which were offered in Convention by Gov. Randolph, who was selected as the organ of the views of the Virginia delegation in that body. With the evidence, then, afforded by Mr. Madison's published correspondence, of his opinions on the Vermont question, we are enabled at once to see the particular significancy and import of the restrictive clause in the resolution just read—"provision ought to be made for the admission of States *lawfully arising* within the limits of the United States." It most clearly had in view the Vermont question, and was intended to guard against the admission of States into the Union which, like Vermont, should have violently separated themselves from the parent State, without the consent of the latter. There were indications of restlessness and an impatient desire for the independent condition of States, at the time, on the part of Maine in Massachusetts, Frankland (the infant Tennessee) in North Carolina, and also in the western part of the State of the honorable Senator of Pennsylvania himself, as I have already mentioned, which seemed to make this wise precaution necessary. Accordingly, the resolution presented by Gov. Randolph, precisely as I have read it to the Senate, was adopted by the Convention, first in Committee of the Whole, and then in the House, and finally referred, together with more general propositions on the same subject by Mr. Pinckney of South Carolina and Mr. Patterson of New Jersey, to the Committee of Detail, who were instructed to report a draught of a Constitution.

In the article prepared by the Committee of Detail on the subject of the admission of new States, the restrictive clause in Gov. Randolph's proposition was retained in substance, though varied slightly in phraseology, and several additional clauses were added to it. It will be necessary to read to the Senate the whole article as reported by the Committee of Detail, that we may better comprehend the *true* effect of the amendments it afterwards underwent. The article is as follows, and, for the sake of simplifying the explanation of the subsequent proceedings of the Convention upon it, its several clauses are numbered :

(1) "New States, *lawfully constituted or established* within the limits of the United States, may be admitted by the Legislature into this Government ; (2) but to such admission the consent of two-thirds of the members present shall be necessary. (3) If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. (4) If the admission be consented to, the new States shall be admitted on the same terms with the original States. (5) But the Legislature may make conditions with the new States concerning the public debt which shall be then subsisting."

When the article was taken up for consideration in the Convention, Mr. Gouverneur Morris first moved to strike out the fourth and the fifth clauses—the one declaring that the new States were to be admitted on the same terms with the original States, and the other providing that conditions were to be made with the new States respecting the public debt. They were stricken out by the vote of nine States to two.

Mr. Luther Martin and Mr. Gouverneur Morris then moved to strike out the second clause, requiring the consent of two-thirds of the members of Congress present to the admission of a new State. It was carried, and by the same vote of nine to two. Now, Mr. President, I cannot forbear remarking that, amid the jealousies respecting the balance of power which are known to have existed between the Northern and Southern portions of the Union in the Convention, and to which every page of Mr. Madison's Debates bears the most impressive testimony, each apprehensive of the preponderance of the other, it is morally impossible that either would have consented to have placed so powerful a means of disturbing the original balance of power, (so carefully and painfully adjusted between them,) as the admission of *foreign* States into the Union would obviously prove, into the hands of a mere majority of Congress. We have seen that even under the articles of confederation, and in time of war, when there were so many inducements to increase the aggregate power of the Confederacy by the addition of new members, a *two-thirds* vote was deemed an indispensable safeguard in regard to the admission of the neighboring British colonies.

But, to proceed with the history of the changes which this article underwent in the Convention. After the successive amendments which I have mentioned, what remained of the original article reported by the Committee of Detail was as follows:

"New States, *lawfully constituted or established* within the limits of the United States, may be admitted by the Legislature into this Government. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to such admission."

In this state of things, Mr. Gouverneur Morris moved the substitute of which so much has been said, without the slightest foundation in a correct comprehension of the proceedings of the Convention, and of the reasons and motives which influenced those proceedings. That substitute is in the following words:

"New States may be admitted by the Legislature into the Union; but no new State shall be erected within the limits of any of the present States without the consent of the Legislature of such State, as well as of the General Legislature."

Now, sir, a little reflection and knowledge of the conflicting interests and opinions in the Convention will show at once the real bearing and operation of Mr. Morris's substitute. There was but one opinion in the Convention that the want of power in the old Congress, under the articles of Confederation, to admit *new States*, should be supplied, and that that power should be given to Congress under the new Constitution. The general proposition, therefore, to give to Congress the power to admit new States, was destined to receive a general support in the Convention. But the restriction of that power to "States *lawfully* constituted or established within the limits of the United States," would, it was clearly foreseen, at once arouse the opposition of the States friendly to the admission of Vermont, and was calculated also to excite the jealousy of those States (particularly Maryland, Delaware, and New Jersey) which had long been engaged in a controversy with the larger States respecting the waste and unappropriated lands within the limits of the latter. This last mentioned class of States would be prone to look upon the restrictive clause in the proposition of Gov. Randolph, and in the article reported by the Committee of Detail, as a sort of *guaranty* of the territorial claim of the larger States. In this state of opinion and feeling in the Convention, Gouverneur Morris, with the tact and sagacity for which he was so conspicuously distinguished, brought forward his substitute, merely changing the arrangement and phraseology of the article reported by the Committee of Detail, so as to present in the first part of it the naked proposition to confer upon Congress the power to admit new States, upon which the whole Convention was agreed, and to transfer to the latter part of it the precautionary and restrictive principle requiring the mutual accord of the new State and that from which it was dismembered, on which it was foreseen a severe struggle must take place.

Accordingly the vote of the Convention was first and separately taken upon the first part of Mr. Morris's substitute, declaring in general terms that "new States may be admitted by the Legislature into the Union;" and it was *unanimously adopted*. Then the question came up on the latter clause, embracing the principle of the restriction in Gov. Randolph's proposition and the article reported by the Committee of Detail, which went to require the consent of the dismembered State as a condition necessary to the *lawful* formation and admission of a new State; and the moment that proposition was presented for the vote of the Convention, Luther Martin opened a vehement attack upon it, appealing directly to the feelings and interests of both classes of the malcontent States already described. These were his remarks:

"Nothing would so alarm the limited States as to make the consent of the large States claiming the western lands necessary to the establishment of new States within their limits. It is proposed to guaranty the States. Shall *Vermont* be reduced by force in favor of the States claiming it? *Frankland* and the western county of Virginia were in a like situation."

The vote was taken, and the latter part of the substitute was carried by only six States to five: New Hampshire and Connecticut, the friends and allies of Vermont, and Maryland, Delaware, and New Jersey, the antagonists of the large States on account of the old grudge respecting the waste and unappropriated lands within the limits of the latter, all voting against it. A modification was afterwards made, which was understood to provide for the case of Vermont, and that drew off the two States of New Hampshire and Connecticut from the opposition; but Maryland, Delaware, and New Jersey held out in unmitigated resistance to the last.

It is seen, therefore, Mr. President, that the question which arose in the Convention had not the slightest reference to the restriction of the power to admit new States to the territorial limits of the United States. No person ever moved, or suggested, or hinted that the power of admitting new States ought not to be limited to the proper territory of the United States. It seemed to be taken for granted by every body that this power, like every other power of Congress, was limited by its own nature, and as a matter of course, to the territory of the United States; and there is the most abundant evidence, in other proceedings of the Convention, that such was the universal understanding of the body. The only question which arose upon Gov. Randolph's proposition and Mr. Morris's substitute was, as has been shown, in regard to a restriction of a wholly different character, referring to the case of a new State arising within the limits of another, and requiring the consent of the latter in such case as a necessary condition to the *lawful* establishment and admission of the new State.

into the Union. The whole affair of Gov. Randolph's proposition and Mr. Morris's substitute, about which so much delusion has been propagated, has absolutely, therefore, not the slightest bearing upon the question which is now under discussion.

Thus the law and the Constitution were, in his judgment, beyond all controversy. With due deference to the honorable Senator from Mississippi, (Mr. WALKER,) in what he had said a few days ago about the opinion of a Judge of the Supreme Court, (referring, he presumed, to the opinion of Judge Johnson, in the case of the American Insurance Company *vs.* Canter,) he would take the liberty of saying that, if the gentleman would look once more at the record, he would find that the opinion of that learned Judge corresponded strictly with that he had expressed, and amounted to this, that we must obtain foreign territory by the treaty-making power: then we might admit new States from that territory by the legislative power. This was the law and Constitution of our land, and on this Mr. R. would take his stand; and he now said to his honorable friend from Pennsylvania, and to the other friends of Texas in that chamber, that if Texas should be brought into this Union by a plain and palpable infraction of the Constitution, such as is now proposed, it would prove a curse and not a boon. It was impossible that the blessing of Heaven could rest upon any measure consummated in defiance of an instrument they had sworn to support. No: in the anxiety of gentlemen, *per fas aut nefas*, to get in Texas, setting aside the provisions of the Constitution, which required the assent of two-thirds of the States of this Union to enter into treaties and agreements with foreign Powers, they would open in this land a fountain of bitter waters which no human power could stanch. Legislative reprisals would be made, and measures of retaliation attempted, under which this Union could not stand. Mr. R. did not say or suppose that it would produce an immediate and formal dissolution of the Union: but this he did say, that if this high-handed measure should be consummated, it would lead to animosities, contentions, and mutual conflicts, which would so embitter the Union as to render a violent disruption of it almost inevitable. He did not say a *final* disruption, for he was still willing to believe that if such a separation did take place, it must be temporary only; for he had endeavored to show, during the last session, that Nature herself had so bound together this glorious land of constitutional liberty, that it was impossible even for the violent passions of men permanently to dissolve the ties by which its various parts are linked together. But the danger was that the re-union would be effected by the sword; and then would follow the sternness of military despotism, extinguishing here, in their last retreat, the hopes of liberty and law on earth. That was his fear.

Let us now, Mr. President, attempt to follow out in the visions of the future what was likely to occur, if, in the face of the remonstrances of those who took their stand upon the plighted faith of the Constitution, this measure should be consummated by a mere majority of the two Houses of Congress. When the next Congress met, supposing the people of Texas to have accepted the terms proposed, what might happen? His friend from Pennsylvania had spoken of this joint resolution as *pledging the faith of the nation*. Mr. R. would ask, could an *act of the Legislature* so pledge the faith of this nation to a foreign Power as to tie up the hands of a succeeding Legislature? Mr. R. did not so read the Constitution. The same legislative majority which passed the joint resolution might repeal it. Who could answer for the changes that might take place in the great deep of public opinion? Who could say how future elections might turn out? What security had gentlemen that the next Congress, by their majority power, might not repeal the act of the present Congress, and, when Texas came for admission, the door be slammed in her face—what then?

But suppose Texas to be admitted. The honorable Senator says he likes this joint resolution because the slavery question is settled by it, and finally put on the basis of the Missouri compromise. Could the honorable Senator say that there was any peculiar sanctity in this joint resolution that must exempt it from the power of future legislation? Might not a future Legislature, under the excitement produced by what they deemed a wanton invasion of the Constitution, rise up and declare that it had the same right to act upon this question as its predecessor; that a former Congress had no right to bind them; and, though a previous body had undertaken to stipulate the observance of the Missouri compromise in Texas, yet when a new State formed out of its territory should come knocking for admittance, it had the same right to prescribe conditions as those who had gone before them, and that it would not admit the new Texan States but upon condition of the perpetual prohibition of slavery? Could they not do so? Would they not have the power? And would not this Congress have furnished them a provocation, if not a justification, by their example in violating the Constitution? Mr. R. told his friend that he was planting the germ of a conflict in the States of this Union, the end of which neither of them could see.

And now he turned to his *Southern* friends on that floor: and he would invoke their sober attention to what he should submit to their consideration. The entire slaveholding portion of this Union could place themselves for safety only on the sacredness of the Constitution. They stood for their very existence on what Mr. Jefferson had called "a sacro-sanct" adherence to its provisions, being the only shield for the rights of a minority. How did they stand in that body? However they might rely (he well knew) on the fidelity of Delaware to all the compromises of the Constitution, Delaware was yet practically a non-slaveholding State. They stood, therefore, in that body as *twenty-four* slaveholding votes to *twenty-eight* non-slaveholding. And in the other House the proportion was eighty-seven Representatives of slaveholding States to one hundred and thirty-six non-slaveholding.

They had just received an admonition which it became them well to heed; they had got a warning in the other branch which they ought not to disregard. There had been a recent vote in that House on a sectional question which might be taken as a fair measure of the relative strength of the two interests. It had been on the permission to Florida to divide her territory into two States when her population should amount to 35,000 east of the Suwannee river, and how did the numbers stand? Seventy-seven in favor of it to one hundred and twenty-three against it—leaving a dead majority of fifty opposed to the slaveholding interest, which was about the same when that House was full. Would Senators representing that interest set the example of trampling on the guaranties of the Constitution, and of admitting the absolute and unlimited power of a majority? Had that been the wisdom of their ancestors? Let gentlemen look at the proceedings of the Southern States at the adoption of the Constitution. They had insisted on a majority of two-thirds in the regulation of commerce, which they had lost, however, in the manner he had shown during the last session of Congress. They had so far succeeded as to require a two-thirds vote to overrule the negative of the President, the necessity of three-fourths of the States for amending the Constitution, and of two-thirds of the States, as represented in the Senate, for the ratification of treaties. Mr. R. had barely alluded to the question of the navigation of the Mississippi in the old Congress. He hoped his worthy friends who represented that region of the Union would look back on the transactions at the time he referred to.

Mr. R. alluded to them as a warning. Under the old Congress the assent of nine States was necessary to the ratification of a treaty. On the arrival of a Spanish Minister, Mr. Jay was authorized to treat with him, but was expressly required to stipulate for the right of the navigation of the Mississippi and for the integrity of our western boundary. These instructions were given by the votes of nine States. Subsequently a plan was proposed for ceding the navigation of the river for twenty-five years, and *a bare majority* rescinded the previous instructions. But then arose the question whether a simple majority could rescind a vote which it had required a majority of two-thirds to adopt. Let gentlemen look at the battles, the bloody battles which ensued in the old Congress, when the *seven* Northern States voted in solid phalanx, and with the undivided force of their entire delegations, against the five Southern States. On that memorable occasion the South had been overwhelmed by a mere majority riding over the provisions of the Constitution. In consequence of this, Mr. Jay agreed upon a treaty with the Spanish Minister, in which our right to the navigation of the Mississippi was yielded for twenty-five years. The South and West protested against it from year to year, until at last, under the wise lead and auspices of Mr. Madison, they had triumphed, but triumphed only under that conservative clause in the articles of Confederation which required the assent of two-thirds for the ratification of a treaty.

Mr. R. held out this piece of history as a warning to the South. They were the weaker party. They should be the very last to give up the conservative features of the Constitution. If they were now so blind as to recognise the dispensing power of a mere majority, the time might come when the peculiar interests of the South, involving their rights of property, their domestic peace, the security of their firesides, would be placed at the mercy of such a majority. Let the present measure be consummated, and the principle it involved be sanctioned, and Southern gentlemen might expect soon to see, by way of reprisal, a majority in both Houses undertaking to abolish slavery in the District of Columbia; and the next thing would be, under color of the clause to regulate commerce among the several States, an act prohibiting the removal and transfer of slaves from State to State; but, more than all, and beyond all, he would ask Southern gentlemen how they would then stand in regard to that great fundamental act, which constituted the sole security of the South as to their retention of their slave property? He referred to the act of 1793. He would invite especially the attention of his worthy and respected friend in his eye, from South Carolina, (Mr. Huger,) to this subject. It was the act for the delivery of fugitive slaves; and gentlemen must remember that it had been solemnly decided by the Supreme Court, in the great case of Prigg *vs.* Commonwealth of Pennsylvania, to which he had already referred, that the power of enforcing such a delivery was *exclusively* in the hands of Congress. The individual States had no power to pass such a law, and, if they did, it would be, under that decision, null and void. Now, if gentlemen sanctioned the right of a mere majority to consummate such an act as now proposed, involving consequences so important, another majority might take their ready revenge in repealing the act of 1793, which would in practice amount to a virtual proclamation of universal emancipation. There would be no security whatever for any slave property. It would be like telling every slave in the country that there was liberty for the captive, and if he could but get beyond the limits of the slaveholding States he was that moment free. Ought not every Southern man to pause before he sanctioned a principle like this, leading so naturally, if not necessarily, to such consequences? He would ask his honorable and highminded friend, for whom no man could cherish more respect and regard than he did, that if we gave our sanction to an example like that now proposed, do we not ourselves "teach bloody instructions, which, when taught, return to plague the inventor?"

> ——— "This even-handed justice
> Commends the ingredients of the poisoned chalice
> To our own lips."

Nor was this all; it had been declared, and that under the sanction of very distinguished names,

to be a constitutional doctrine that in time of war the rights of property were submitted to the absolute discretion of the war power. "*Inter arma silent leges.*" Suppose, then, the nation to be in a state of actual war, Congress growing tired of the contest, the resources of the country exhausted, and a majority in both Houses prepared to terminate the struggle. What could they do? (Mr. R. had seen in one of the leading papers of his own State the doctrine unequivocally advanced by a favorite writer, that the power which declared war could terminate a war and make peace, in the very teeth of the Constitution.)

Again he asked, whither we were tending? Suppose a majority in both Houses to be tired of the war, and resolved on returning at all hazards to a state of peace; the Minister of the hostile Power demanded the abolition of slavery as the price of peace; then, according to the precedent now to be set, and the new doctrines broached by the friends of annexation, *at all hazards*, a majority of Congress might make a treaty of peace, in which a proclamation of freedom would form the leading article? He admitted that these things were monstrous even in idea, but he contended that they were but the legitimate offspring of the claim now set up to make a treaty with a foreign Power by a bare majority of Congress. It would be a fair corollary from such premises.

Mr. R. said he had seen with despondency, with a depression of spirit which he had no words to express, the most disorganizing doctrines, as he conceived them to be, broached respecting fundamental provisions of the Constitution. His honorable friend from Pennsylvania (Mr. BUCHANAN) said that he was a friend of the Constitution. Mr. R. would be the last to doubt it; but, unfortunately, like a highly distinguished character, with whom he knew it would be the pride of the honorable Senator to have his name associated, he feared he was a friend to "the Constitution *as he understood it.*" [A laugh.] Mr. R. was sorry, knowing as he did the gentleman's fidelity to the constitutional compromises in favor of the rights of the South, that he should give the great weight of his personal authority to the dangerous doctrines of which he had spoken. These doctrines had unhinged the public mind. The very axioms and postulates with which our system of constitutional checks started were denied—every thing was thrown completely at sea, under this sudden furor for the acquisition of a foreign territory, in utter disregard of the limits of the Constitution.

Mr. R. said that he did in his conscience believe that the issue of the experiment here first made of a written, balanced, limited Constitution, depended on the vote which should be given on the present resolutions. He wished he could invoke the aid of some powerful friend, feeling as he did in this great crisis of our history. If he knew such an one, he would call upon him to stand "between the dead and the living and stay this plague:" to arrest this political "pestilence, which walketh in darkness;" this wide-spreading "destruction, which wasteth at noon-day." Was there not a Senator within these walls worthy of such a mission, and with a party and political influence adequate to fulfil it, and to secure the country from so threatening and portentous an evil?

But he was told that we never could get two-thirds of the States represented in this body to consent to the admission of Texas. Gentlemen said that there was no chance of ever effecting the measure by treaty; and, therefore, if we desired the annexation, it must be done in the form of a resolution to be passed by a bare majority of the two Houses. Mr. R. did not believe this was the case; but if it were so, it could furnish no justification for an open and palpable infraction of the Constitution. If such were the alternative, he for one could never yield to such an appeal.

But was it true? Had not Louisiana been acquired by the treaty-making power? Had she not come in by acclamation? Such was the statement of Mr. Jefferson; and we had the authority of another distinguished man (Mr. Adams) for saying, as he did at the time, that such was the general favor towards that measure, that he believed an amendment of the Constitution to remove the constitutional difficulties felt by many, would be *unanimously* ratified by the States, and by acclamation. As it was, the treaty was ratified with the votes of only three States and a half against it. And had we not acquired Florida by a treaty which was *unanimously* ratified? Why, then, despair of the acquisition of Texas by like means, if it be the great national measure it was supposed to be? In many of the views expressed by the honorable Senator from Pennsylvania Mr. R. concurred. He agreed with him as to the benefits that would accrue to the navigating and manufacturing States, and also as to the advantages, in some respects, that would be gained by the cotton-growing States, and the new and extended market to be acquired by the Western agricultural States.

But in all this array of benefits, what had he promised to poor old Virginia? In the Indian's phrase, he had not "said turkey to her once." [A laugh.] He had predicted that her slave labor would desert her *worn-out soil*, and, as a necessary consequence, with the slaves would go their masters. *Depopulation* was the boon held out to Virginia. Mr. R. said he thought that he knew something of the interests of his own State. He had seen sometimes a sordid appeal to her cupidity from the predicted enhancement of the value of slave property. For one he despised the appeal. As a Virginian and a slaveholder, who continued to be so far more from considerations of humanity than of interest, he scorned so sordid an appeal. But, to every man capable of forming a judgment in the case, he said that the fact would not be so. Every one knew that the value of slave labor was regulated by the price of its principal production, cotton. The price of that was certainly not likely to be advanced by adding still further to the overproduction which had already so seriously affected the state of the market, and an increased and accelerated over-production seemed to be the inevitable consequence of opening the lands of Texas to American industry and enterprise.

Virginia stood in a position to regard the acquisition of Texas as a great national object only,

calculated to strengthen the whole Confederacy, but not to promote any special interests of hers, which were more likely to be injured than benefited by it. But it was her vocation to make sacrifices for this Union; she had yielded up her vast territory without a sigh for the good of her sister States: she was used to the work of sacrifice; she had done it over and over till it was become a habit of her State policy. Virginia, in favoring the acquisition of Texas, could be governed by none but broad national considerations, and the same considerations must make her desirous of seeing the object accomplished without any wound inflicted upon the harmony of the Union, and, above all, without any wound inflicted on the vital principles of the Constitution. He did not hesitate to say, therefore, on his responsibility as a Senator of that ancient Commonwealth, that if Texas can now be acquired *only* by a sacrifice of the Constitution, let her await a more convenient season.

Our Republic had already boundaries of vast extent—it stretched from ocean to ocean: we had an ample area for three hundred millions of human beings. Ought not this to reconcile gentlemen to some little delay? Were we so pent in, so crowded for room, that we must burst through the barriers of the Constitution to get a little breathing space? He humbly thought we could yet live without Texas, if need be, though he was desirous of seeing it restored to its natural connexion with the United States, whenever it can be constitutionally done. But, as a nation worthy of our glorious ancestors, we could not live or breathe a day except under the shelter of our precious and sacred Constitution, the palladium of freedom, the hope of the world.

On a great occasion in the history of his country, when measures were proposed which he believed destructive of her constitutional freedom, a renowned Irish patriot and statesman used these memorable words: "If any body of men should think the Irish Constitution incompatible with the unity of the British empire—a doctrine he abjured as sedition against both—he would answer, Perish the empire, live the Constitution!" In the spirit of that noble declaration, he would now say here in his place, as a Senator of Virginia, that if the sacred provisions of the Constitution of his country could not be reconciled with a further enlargement of its territory—a doctrine he rejected as utterly contradicted by the history of the past, for, under that Constitution, and by a faithful compliance with its forms, we had already added to our limits an empire greater far than the whole territory of the United States at the time of its adoption—but were it so, and the issue now presented to us was to give up the hope of acquiring Texas or to break through all the barriers of the Constitution to accomplish it, he would say, with the immortal Grattan, if they were his last words on earth, as they probably are on this floor, Perish all thoughts of illegitimate acquisition; Live forever our free and glorious Constitution—the sole pledge of our peace, of our safety, of our honor, of our blessed and happy Union.

It had been the fate of that great patriot (to use his own touching and graphic words on another occasion) to "watch over the Constitution of his country in its cradle—to follow it to its grave." Few if any of those whom Mr. R. now addressed had enjoyed the privilege of assisting at the birth of our Constitution; but, if this dangerous and revolutionary precedent, as in his conscience he believed it, should receive the sanction of that body, then it might yet be the melancholy office of many of us to follow that Constitution to an untimely grave.